

100TH CONGRESS
1ST SESSION

H. R. 3640

To authorize the Secretary of Commerce to recover damages for the injury to or destruction of national marine sanctuary resources.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 10, 1987

Mr. STUDDS (for himself, Mr. JONES of North Carolina, Mr. HUTTO, Mr. FASCELL, Mr. HUGHES, and Mr. BENNETT) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To authorize the Secretary of Commerce to recover damages for the injury to or destruction of national marine sanctuary resources.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That title III of the Marine Protection, Research, and Sanc-
4 tuaries Act of 1972 (16 U.S.C. 1431 et seq.) is amended—
5 (1) by redesignating sections 308 and 309 as sec-
6 tions 309 and 310 respectively; and
7 (2) by inserting after section 307 the following
8 new section:

1 SEC. 308. CIVIL ACTIONS TO RECOVER DAMAGES FOR THE
2 INJURY TO OR DESTRUCTION OF SANCTUARY
3 RESOURCES.

4 “(a) DEFINITIONS.—As used in this section:

5 “(1) The term ‘damages’ means, with respect to a
6 sanctuary resource that has been destroyed, or injured,
7 the following:

8 “(A) compensation for—

9 “(i) the cost of replacing, restoring, or
10 acquiring the equivalent of the resource; and

11 “(ii) the value of the loss of the use of
12 resource pending its restoration, rehabil-
13 itation or the acquisition of equivalent
14 resources.

15 “(B) The cost of assessment under subsection
16 (d).

17 “(2) The term ‘sanctuary resource’ means any
18 living or nonliving resource of a national marine sanc-
19 tuary that is identified in the designation of the sanctu-
20 ary as contributing to the conservation, recreational,
21 ecological, historical, research, educational, or esthetic
22 value of the sanctuary.

23 “(b) LIABILITY.—

24 “(1) Except as provided in paragraph (2), any
25 person that destroys, causes the loss of, or injures any

1 sanctuary resource is liable to the United States Gov-
2 ernment for damages.

3 “(2) A person is not liable under paragraph (1)
4 if—

5 “(A) that person can establish by a prepon-
6 derance of the evidence that the destruction or
7 injury to the sanctuary resource was caused solely
8 by an act of God, an act of war, or an act or
9 omission of a third party if the defendant acted
10 with due care.

11 “(c) CIVIL ACTIONS.—

12 “(1) The Secretary, acting as the trustee on
13 behalf of the public to recover damages for the injury
14 to or destruction of any sanctuary resource, shall com-
15 mence a civil action in the United States district court
16 for the appropriate district against any person who is
17 liable under subsection (b)(1).

18 “(2) Venue for any civil action under this section
19 lies in any district in which the defendant resides, may
20 be found, or has his principle office, or in the district
21 adjacent to the national marine sanctuary.

22 “(d) ASSESSMENT OF DAMAGES.—

23 “(1) The Secretary shall assess the damages that
24 will be sought in a civil action under this section.

1 “(2) Any assessment of damages to natural re-
2 sources for the purposes of this Act undertaken in ac-
3 cordance with the regulations promulgated under sec-
4 tion 301 of the Comprehensive Environmental Re-
5 sponse, Compensation, and Liability Act of 1980 shall
6 have the force and effect of a rebuttable presumption
7 on behalf of the Secretary in any administrative or ju-
8 dicial proceeding under this Act.

9 “(e) USE OF RECOVERED DAMAGES.—Sums recovered
10 by the Secretary under this section shall be retained by the
11 Secretary in accordance with section 107(f)(1) of the Com-
12 prehensive Environmental Response, Compensation, and Li-
13 ability Act, as amended. Such funds shall be used, in order or
14 priority, to—

15 “(1) restore, replace, or acquire the equivalent of
16 the sanctuary resource that was the subject of the
17 action;

18 “(2) manage the national marine sanctuary of
19 which such sanctuary resource was a part; or

20 “(3) manage any other national marine sanctu-
21 ary.”.

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